



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN STREET  
CHICAGO, IL 60604

EPA Region 5 Records Ctr.



209516

OCT 29 1991

REPLY TO THE ATTENTION OF:  
5HS-12

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. David B. Fisher  
600 West 41st Street  
Chicago, Illinois 60609

Re: Fisher-Calo/Cylinder Site  
Kingsbury, Indiana

Dear Mr. Fisher:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within ten (10) calendar days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within fourteen (14) calendar days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Steven Kaiser, Assistant Regional Counsel, at (312) 353-6126 or Leonard Zintak, On-Scene Coordinator, at (312) 886-4246.

Sincerely yours,

David A. Ullrich, Director  
Waste Management Division

Enclosure

cc: Reginald Baker, IDEM Superfund State Coordinator



bcc: Tom Pernell, ORC (5CS-TUB-3)  
Steve Kaiser, ORC (5CS-TUB-4)  
Len Zintak, OSC (5HS-12)  
Pamela Schafer, ESS (5HS-12)  
Debbie Regel, ESS (5HS-12)  
Oliver Warnsley, RP-CRU (5HS-TUB-7)  
Toni Lesser, Public Affairs (5PA-14) w/out attachments  
Sheila Huff, Department of Interior  
Tony Audia (5MFS-14)  
EERB Site File  
EERB Read File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

IN THE MATTER OF:

FISHER-CALO/CYLINDER SITE

Respondent:

Mr. David B. Fisher

) Docket No. V-W- '91-G-126  
)  
) ADMINISTRATIVE ORDER  
) PURSUANT TO SECTION 106  
) OF THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
) COMPENSATION, AND  
) LIABILITY ACT OF 1980,  
) as amended, 42 U.S.C.  
) Section 9606(a)  
)

PREAMBLE

This Administrative Order (Order) is issued on this date to Respondent, Mr. David B. Fisher, who is located at 600 West 41st Street, Chicago, Illinois 60609.

It is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Waste Management Division, Region V, by Regional Delegation 14-14-A and 14-14-B.

By copy of this Order the State of Indiana has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires Respondent to undertake and complete emergency removal activities to abate an imminent and substantial endangerment to the public health and welfare or the environment that may be presented by the actual or threatened release of hazardous substances at the Site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Fisher-Calo/Cylinder Site is located within the Fisher-Calo Superfund Site, and is situated on Second-Line Road in the Kingsbury Industrial Park, Kingsbury, Indiana. For purposes of this Order, the Fisher-Calo/Cylinder Site consists of the area containing approximately 245 compressed gas cylinders located in Building 1 of the Second-Line Road area. (See Attachment 1.)
2. Approximately 245 abandoned, deteriorated compressed gas cylinders were discovered in Building 1 during a PRP-funded removal action initiated in 1989. Access to the cylinders was restricted while approximately 3,000 drums of hazardous wastes were removed from the building.
3. These cylinders are currently stored at the Site, and access, while limited, is not unrestricted.
4. The cylinders are believed to contain ammonia, methyl chloride, chlorine, sulfur dioxide, and hydrogen chloride gas.

#### DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. Fisher-Calo/Cylinder Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Respondent David B. Fisher is the present "owner" and "operator" of the Fisher-Calo/Cylinder Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).
4. Ammonia, methyl chloride, chlorine, sulfur dioxide, and hydrogen chloride gas are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. The 245 compressed gas cylinders, some of which contain hazardous substances, constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.

7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment.
8. The conditions present at the Facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.415(b)(2). These factors include, but are not limited to, the following:
  - a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

This factor is present at the Facility due to the existence of abandoned, deteriorated compressed gas cylinders which may leak or rupture causing an air release of hazardous substances into the surrounding Kingsbury Industrial Park.

- b. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

This factor is present at the Facility due to the existence of deteriorated compressed gas cylinders containing hazardous substances located in an unsecured building. Most of the cylinders are stored upright in an unstable, unsecured manner.

- c. threat of fire or explosion;

This factor is present at the Facility due to the existence of deteriorated, improperly stored compressed gas cylinders. The cylinders could explode if overheated, overfilled, or if the cylinder valves were to fail.

- d. other situations or factors which may pose threats to public health or welfare or the environment.

This factor is present at the Facility due to the existence of periodic vandalism at the Site. Vandals could enter the building and cause an explosion or air release from the cylinders. An explosion or air release would pose a serious health threat to the surrounding businesses and residents near the Site.

#### ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a),

it is hereby Ordered that the Respondent undertake the following actions at the Facility:

1. Within fourteen (14) calendar days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 4 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent shall implement the Work Plan as finally approved by U.S. EPA. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.
2. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.
3. Respondent shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within seven (7) calendar days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent. In the event U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.
4. Within seven (7) calendar days after U.S. EPA approval of the Work Plan, Respondent shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondent to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require the Respondent to perform, and complete within thirty (30) calendar days after approval, at a minimum, the following removal activities:
  - a. Develop and implement a detailed site health and safety plan.

- b. Establish and maintain site security until the cylinders are safely removed and disposed of off-site.
  - c. Retain a qualified contractor to secure, identify, and dispose of approximately 245 abandoned cylinders containing hazardous materials.
- 5. All materials containing hazardous substances, pollutants or contaminants removed pursuant to this Order shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.
- 6. On or before the effective date of this Order, the Respondent shall designate a Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. The U.S. EPA has designated Leonard Zintak of the Emergency and Enforcement Response Branch, Response Section III, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondent and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator.
- 7. The U.S. EPA and the Respondent shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be verbal, but shall promptly be reduced to writing.
- 8. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the facility.
- 9. No extensions to the above time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

10. This Order and all instructions by the U.S. EPA On-Scene Coordinator or his designated alternate that are consistent with the National Contingency Plan and this Order shall be binding upon the Respondent.
11. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent, Respondent shall obtain all necessary access agreements. In the event that after using their best efforts Respondent is unable to obtain such agreements, Respondent shall immediately notify U.S. EPA. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate.
12. Respondent shall provide access to the Facility to U.S. EPA employees, contractors, agents, and consultants at reasonable times, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.
13. Nothing contained herein shall be construed to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law.
14. This Order shall be effective fourteen (14) calendar days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the third (3rd) calendar day following the day of the conference unless modified in writing by U.S. EPA.
15. On or before four (4) business days of the effective date of this Order, Respondent shall provide notice, verbally or in writing, to U.S. EPA stating their intention to comply with the terms of this Order. Verbal notification must be followed in writing within two (2) calendar days. In the event the Respondent fails to provide such notice, the Respondent shall be deemed not to have complied with the terms of this Order.
16. Copies of all records and files relating to hazardous substances found on the Site shall be retained for six years



following completion of the activities required by this Order and shall be made available to the U.S. EPA prior to the termination of the removal activities under this Order.

17. Respondent shall provide a written monthly progress report to the On-Scene Coordinator regarding the actions and activities undertaken under this Order. At a minimum, these progress reports shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by the Respondent and shall describe all significant work items planned for the next month.
18. The Respondent shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within sixty (60) calendar days of completion of the work required by the U.S. EPA.
19. All notices, reports and requests for extensions submitted under terms of this Order shall be sent by certified mail, return receipt requested, and addressed to the following:

one copy            Leonard Zintak  
                     On-Scene Coordinator  
                     U.S. Environmental Protection Agency  
                     230 South Dearborn Street, 5HS-12  
                     Chicago, Illinois    60604

one copy            Steven Kaiser  
                     Assistant Regional Counsel  
                     U.S. Environmental Protection Agency  
                     230 South Dearborn Street, 5CS-TUB-4  
                     Chicago, Illinois 60604

20. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

#### ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Determinations and Findings is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 W. Jackson Blvd., Third Floor, Chicago, Illinois. Please contact Steven Kaiser, Assistant Regional Counsel, at (312) 353-6126 to review the Administrative Record. An index of the Administrative Record is attached hereto.

#### OPPORTUNITY TO CONFER

With respect to the actions required above, Respondent may within ten (10) calendar days after issuance of this Order, request a conference with the U.S. EPA. Any such conference shall be held within seven (7) calendar days from the date of request unless extended by mutual agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person, or be represented by an attorney or other representative. If the Respondent desires such a conference, the Respondent shall contact Steven Kaiser, Assistant Regional Counsel, at (312) 353-6126.

If such a conference is held, Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within three (3) calendar days following the conference. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within fourteen (14) calendar days following the issuance of this Order. Any such writing should be directed to Steven Kaiser, Assistant Regional Counsel, at the address cited above.

Respondent is hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and

Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

PENALTIES FOR NONCOMPLIANCE

Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject the Respondent to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

By: David A. Ullrich  
David A. Ullrich, Director  
Waste Management Division  
United States Environmental  
Protection Agency  
Region V

October 25, 1991



# FISHER-CALO SITE

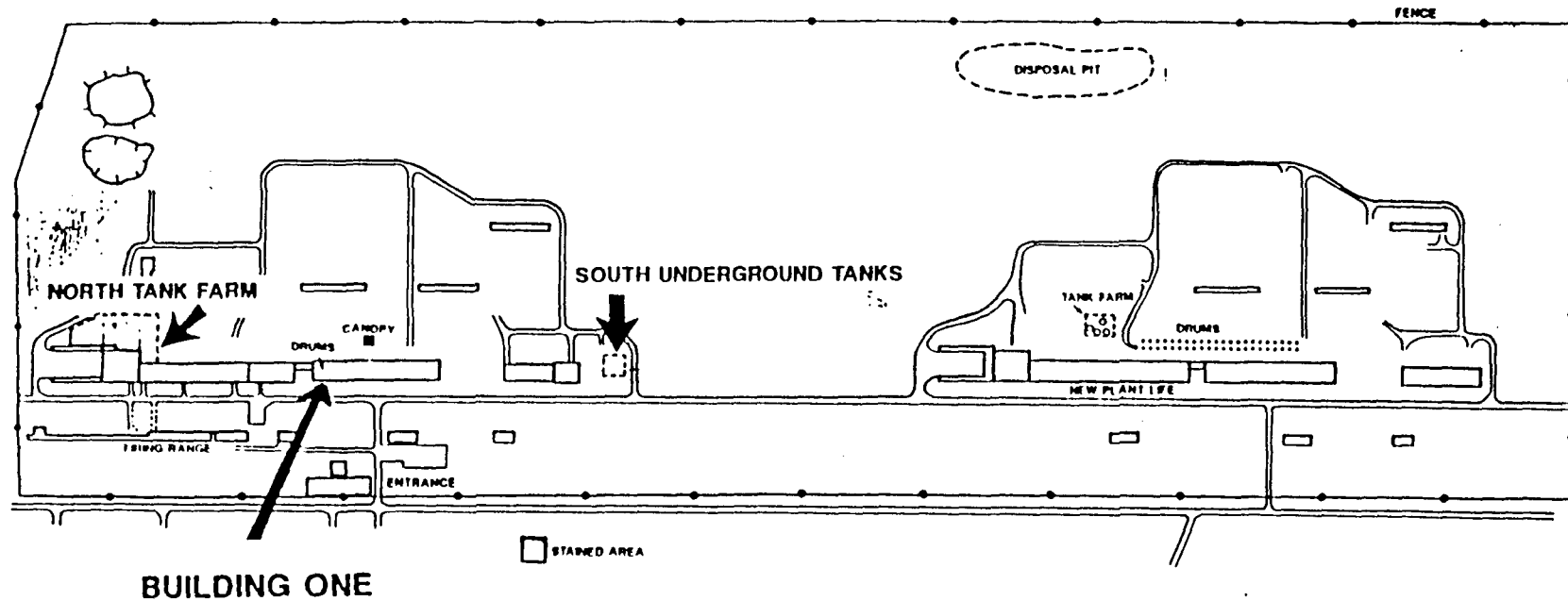


FIGURE 2  
SITE MAP  
FISHER-CALO  
LAPORTE, INDIANA

NOT TO SCALE



MAJOR  
PROGRAMS  
DIVISION

## REGION V TECHNICAL ASSISTANCE TEAM

DRAWN BY P. FAUBLE	DATE 3-7-90	PCS # 2117
APPROVED BY C. CARON	DATE 3-7-90	TDD # 5-8901-05

ADMINISTRATIVE RECORD  
FOR  
FISHER CALO/CYLINDER

Kingsbury, Indiana

October 16, 1991

<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
00/00/00	Cardinal Chemical		Inventory of Pressure Con- tainers and Related Information	56
00/00/00	Zintak, L., U.S. EPA		Action Memorandum	

LIABILITY FILE INDEX  
FOR  
FISHER-CALO/CYLINDER SITE

<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/ DESCRIPTION</u>	<u>PAGES</u>
08/12/86	PRC	U.S. EPA	Responsible Party Search	100